

Workplace Injury Case Note

October 2007

AUSTRALIA MEAT HOLDINGS PTY LIMITED v Q-COMP (C/2007/30)

"Compensation is payable for an injury sustained by a worker that is caused by the worker's serious and wilful misconduct only if an injury results in death or the insurer considers the injury could result in a WRI of 50% or more."

Section 130 of the *Workers' Compensation & Rehabilitation Act 2003* limits the ability for a worker to obtain worker's compensation benefits for injury if the injury is caused by the worker's serious and wilful misconduct.

In *Australian Meat Holdings Pty Limited v Q-Comp*, President Hall of the Industrial Court of Queensland had to consider what was meant by the term "serious and wilful misconduct".

A boner employed by Australian Meat Holdings Pty Limited suffered an injury to his hand in February 2006 when it came into contact with a knife blade wrapped in paper towel pointing upwards from his pocket. The worker cut his ulna nerve as his left arm swung whilst he was walking back to his work station.

The evidence was, that the worker had gone to his locker to sharpen his knife and was returning through the boot wash when he was injured. The worker's conduct in both carrying the knife and keeping a sharpening implement in a locker were contrary to the system of work organised by the worker's employer.

The worker applied for Workers' Compensation with his employer. It accepted that he had an injury as defined by Section 32 of the *Workers' Compensation & Rehabilitation Act*, but declined to accept his claim arguing that the injury was caused by the worker's serious and wilful misconduct. The employer asserted that s 130 of the *Workers Compensation & Rehabilitation Act* applied to exclude there being an entitlement to statutory workers compensation benefits .

The worker sought statutory review of this decision and Q-Comp decided that the conduct was wilful misconduct for the purpose of Section 130 (1) of the *Workers' Compensation and Rehabilitation Act* but it was not serious wilful misconduct. The employer appealed to the Industrial Magistrates Court and the Industrial Magistrate dismissed the appeal. The employer then appealed against the decision of the Industrial Magistrate to the Industrial Court. The respondent to the Appeal was Q-Comp, as it was the decision maker which determined that the worker was eligible for Workers' Compensation benefits.

In determining the matter, President Hall identified that the Industrial Court of Queensland was only concerned with the issue of whether the conduct in which the worker engaged could properly be characterised as serious misconduct. Both parties considered that the conduct was wilful misconduct as there was an intention on the part of the worker to undertake the activity knowing it was contrary to the employers system of work and notwithstanding evidence that he has been told by the employer to cease the activity.

The court therefore had to consider the magnitude of the wilful misconduct and whether it was of a degree which would amount to it being classified as serious wilful misconduct.

In weighing up whether or not the conduct was serious wilful misconduct, the Court identified that the worker recognised that there was a risk of injury. President Hall noted that the worker had not only wrapped the knife blade in paper but chosen to carry the knife blade upward with the handle down due to concern it might result in a cut to his leg if the blade pointed downwards in his pocket.

The President considered that the worker appreciated the risk the blade of the knife posed but had become complacent concerning his capacity to manage it. He stated, "*complacency of that type goes to the seriousness of the failure to observe the employer's system of work*". President Hall also identified that there was a risk posed to fellow workers who were within the vicinity whilst the worker was undertaking his knife sharpening procedure.

President Hall therefore determined that there was serious wilful misconduct as contemplated by Section 130 of the *Workers' Compensation & Rehabilitation Act 2003* and considered that the worker's claim for Workers' Compensation was one for rejection.

COMMENT

The question of whether the actions of a worker constitutes serious wilful misconduct or wilful misconduct which is not serious, is a conclusion which is to be drawn on a case by case basis having regard to the circumstances giving rise to the injury. The system of work put in place by an employer, the magnitude of contravention of that system by the worker and risk to other co-workers posed by the injured workers actions are relevant considerations.

Circumstances involving momentary inattention or carelessness by a worker will not amount to wilful misconduct. In circumstances where the worker's conduct can be described as wilful misconduct, then consideration must then be given to whether the misconduct is of such a magnitude that it amounts to serious wilful misconduct. If it does amount to serious wilful misconduct then the workers compensation claim will be rejected unless the action has caused the workers death or the insurer considers the WRI is likely to be assessed at or above 50%.

For further information on this matter, please contact Susan Andersen
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